Supreme Court U.S.
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No. 01-1604

IN THE

Supreme Court of the United States

BRUCE LAVINE, as next friend of James Lavine,

Petitioner,

v.

BLAINE SCHOOL DISTRICT, a municipal corporation, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

TYNA EK
MERRICK, HOFSTEDT & LINDSEY, P.S.
Attorneys for Respondents
710 Ninth Avenue
Seattle, Washington 98104
(206) 682-0610

174196

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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STATEMENT OF THE CASE

The Statement of the Case presented by Petitioner does not accurately reflect who made the decision to expel high school student James LaVine, the panoply of concerns that led to his emergency safety expulsion, or the administrative procedure utilized for his emergency expulsion and subsequent reentry into school. All three are necessary to an understanding of why the core dispute in this case is largely semantic, with the parties agreeing that James' removal from school pending a psychological evaluation was appropriate, but arguing over whether this removal should have been termed a "suspension" or an "emergency expulsion." This semantic dispute is too inherently tied to Washington administrative regulations to warrant review by the U.S. Supreme Court.

James LaVine did not receive a disciplinary expulsion from Blaine High School, but rather was temporarily removed from school under an emergency safety expulsion procedure after he displayed many signs of dangerous mental instability and he refused to voluntarily consent to a psychological evaluation. Unlike a disciplinary suspension in which the student is removed from school for a predetermined length of time, an emergency expulsion continues just until the safety concern is addressed, as in this case when it was revoked immediately upon receipt of an opinion by a mental health professional that it was safe to allow James to return to school.

Petitioner suggests that James LaVine was expelled in an effort to discipline him for the content of the violent poem that he submitted to his English teacher, Vivian Bleeker. In forwarding this assertion, the LaVines have incorrectly stated a number of facts. First, the record does not support

Petitioner's claim that Vivian Bleeker "invited her students to turn in personal writings for her review." Petition at 4. James LaVine's poem titled "Last Words" was not part of a classroom assignment, the class was not studying poetry or creative writing, and Vivian Bleeker did not offer extra credit in her class. Second, although Ms. Bleeker did not initially consider the poem to be a direct personal threat to her, she was concerned that James might hurt himself and did not know whether he might come to school with a gun and shoot others as he vividly described himself doing in "Last Words." That is the reason she contacted the school counselor, who knew James better.

Karen Mulholland, the school counselor, was alarmed by the poem, as were Principal Newell and Vice-principal Haney, who were contacted over the weekend to address this emergent situation. The poem so alarmed the school administrators and counselor because of their knowledge of James' history. The entire factual context was taken into consideration by Principal Newell when he made the decision, following consultation with the Vice Principal, school counselor and teacher, to emergency expel James LaVine until he received assurance that James was not at serious risk of harming himself or others.

In deciding how to address the safety concerns raised by James' poem in the full context of his recent behavior, the school administrators considered a myriad of specific factors in James' background, including the following:

- James had previously confided to the school counselor his suicidal feelings and remained on a suicide watch list at the school;

- James, in the school counselor's view, was battling on-going depression and was "seething";

- James had been involved in a fight on school grounds in which he had been seen mercilessly kicking another student who was lying helplessly on the ground;

- James' girlfriend had recently ended their relationship, and her parents had complained to the school administration three days before his submission of the poem that James had been stalking their daughter;

- James confided to the school counselor that he had an altercation with his father a few weeks earlier, that James had reported his father to the police, that a no-contact order had been issued and his mother had made James leave the family home as a result, that his father was to be tried for criminal assault and James was to be called as a prosecution witness, and that James was hurt, angry and feeling a lot of family pressure.

- At the time the decision to expel was made, the school did not know the outcome of James' father's criminal trial or James' feelings about his participation in the process. James was absent from school the three days immediately preceding his submission of the poem during last period on Friday, October 2, 1998.

- James submitted his poem four to six months after a string of school shootings that received heavy media attention, including a much-publicized case in nearby Springfield, Oregon in which Kip Kinkel shot and killed two students and his parents who were teachers, and injured many others.

The high school principal, vice-principal, school counselor and James' English teacher met and discussed the situation over the weekend. Contemporaneous notes taken during those meetings confirmed that the school administrators' and faculty's concern was in assessing James' risk of suicide or violence toward others. They contacted the local police for advice, who referred them to the Washington State Department of Child Protective Services, which in turn referred them to the Mental Health Crisis Line, which eventually put them in contact with a county designated psychologist, Charles DeWitt, Ph.D. After reviewing the poem "Last Words," in which James graphically describes himself shooting 28 people in his class then killing himself, and briefly discussing James LaVine's background with the school counselor, Dr. DeWitt advised law enforcement officials to pick James up for an immediate psychiatric evaluation.

Sheriff deputies found James at his home, and interviewed him about the situation. Contrary to the literary explanation of his reasons for writing the poem coined for summary judgment, James initially was unable to explain why he had written the poem. He said he frequently wrote poetry, but had never before written poetry with a similarly violent theme. At his deposition, James denied thinking about the recently publicized school shootings when he was writing the poem,

and described the material as just flowing out of him. James admitted that even he was quite disturbed at first by the violence described in the poem, particularly because he did not know what had motivated him to write this violent poem. James told the sheriff deputies that he was unwilling to voluntarily consent to a psychological evaluation, and Dr. DeWitt concluded there was insufficient evidence to compel an involuntary psychiatric commitment.

Considering the totality of the circumstances, and the LaVine family's unwillingness to voluntarily submit James for a professional evaluation of the danger that he posed to himself or others, Principal Newell decided that the risk to James and the students and faculty was too great to accept. James and his parents were notified in person and in writing on Monday, October 5, 1998 that James was subject to "EMERGENCY EXPULSION" for behavior that was "significant enough to be classified as dangerous to your son and/or a threat to other students and/or a threat of serious disruption to the education process;" in other words, an emergency safety expulsion under Wash. Admin. Code § 180-40-295.

The LaVine family challenged Principal Newell's decision, and asked for a hearing before the district school board in accordance with Washington administrative procedure. Notably, the LaVines did not challenge the emergency expulsion at the school board hearing, but objected to the wording of the letter of expulsion because they argued that someone who reviewed James' file could misinterpret the letter as indicative of a disciplinary expulsion rather than a safety expulsion because the letter used the word "sanction." The School Board upheld Principal Newell's decision to emergency expel James LaVine pending an evaluation to assure that his presence at school did not pose an unreasonable

danger to himself or others, but as an accommodation to the parents' concerns, ordered that the letter of expulsion be revised to unquestionably indicate that the expulsion was solely for safety concerns.

The school district advised the LaVines that James could return to school as soon as the district received assurance that James' presence at school did not pose a danger to himself or others. The district suggested that one way to satisfy its safety concerns was to consent to an evaluation by a qualified psychiatrist, and the district offered to pay for the evaluation. Dr. Robert Watson evaluated James LaVine, and after three sessions concluded that James was safe to return to school. Dr. Watson testified, in pertinent part, as follows:

> It is my opinion that, in early October, 1998, the Blaine School District could not safely predict that James Lavine would not hurt anyone or act violently in the school setting.
>
> I am of the opinion that in early October, 1998, the circumstances clearly indicated that James Lavine needed to be evaluated and I would have recommended that he be removed from the school setting pending such an evaluation.
>
> During my sessions with James, I found him to be rageful, reactionary, impulsive, and unpredictable. It is my recollection that he walked out of the first session and was very angry. It was only until I completed a third session with James and I felt that he was starting to communicate with me and

> his parents that I found that I could recommend his return to school with a professional opinion that it would be safe.

(ER 333-34).

The Ninth Circuit concluded there was no First Amendment violation because Principal Newell and the Blaine School District had not sought to punish James for the content of his poem, but rather acted out of concern that James posed a danger to himself or others — a concern that was reasonable under the totality of the circumstances. The Ninth Circuit held that neither the First Amendment, nor the U.S. Supreme Court cases that have interpreted the First Amendment in a school context, require a school administrator to refrain from acting to prevent school violence until there is sufficient proof to satisfy the standard for an involuntarily psychiatric commitment.[1] There was overwhelming, undisputed evidence that Principal Newell and the School Board considered a myriad of factors about James LaVine in addition to the poem itself, and that these factors taken as a whole raised a legitimate safety concern justifying removal from school pending a psychological evaluation. The School District's intent to protect James and the student body was further substantiated by the District authorizing James to return to school as soon as the evaluating psychiatrist said that it was safe for him to do so.

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1. The Ninth Circuit noted that under Washington law, a teenager may not be involuntarily committed for psychiatric evaluation unless a mental health professional concludes that the teenager is suffering from a mental disorder and presents a likelihood of serious harm. *LaVine v. Blaine School District*, 257 F.3d at 990, referencing Wash. Rev. Code § 71.34.050.

REASONS FOR DENYING THE WRIT

A. The Only Mechanism In Washington For Immediately Removing A Student From School For Safety Concerns Is Through The Emergency Expulsion Procedure Used In This Case

The distinction under Washington law between a disciplinary suspension or expulsion, and an emergency safety expulsion, is critical to understanding why the Blaine School District had only one procedural mechanism for immediately removing James LaVine from school pending a psychological evaluation, and why the semantic dispute in this case is unworthy of Supreme Court review. In Washington, removing a student from school for disciplinary reasons may be done through suspension or expulsion. A suspension must be for a predetermined length of time, with suspension for 10 days or less falling under the procedural requirements for a "short-term suspension," and suspension for more than 10 days subject to the requirements for a "long-term suspension." Wash. Admin. Code § 180-40-205, § 180-40-245 and § 180-40-260. The disciplinary tool selected, and the length of any suspension, must be justified by the nature of the student's proscribed misconduct.

A disciplinary suspension or expulsion in Washington requires advance notice to the student and parents, and therefore is not suited to an emergent situation. *See* Wash. Admin. Code § 180-40-250, § 180-40-265 and § 180-40-280. In contrast, the emergency expulsion procedure was adopted specifically to address emergent safety concerns at school, and allows an administrator to expel a student without prior notice so long as the administrator:

> has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process.

Wash. Admin. Code § 180-40-295.

The LaVines have conceded in their Petition that "[n]o one denies that school officials could have temporarily removed James from school pending a psychiatric evaluation to ensure that he did not pose an unreasonable risk of harm." Petition at 18. This is precisely what was done in this case. The District Court's and the LaVines' suggestion that a temporary suspension rather than expulsion would have been the appropriate response to the school administrators' safety concerns demonstrates misunderstanding of the procedures available to a school under Washington law. As the Ninth Circuit specifically noted in its decision, an emergency safety expulsion is the only procedural mechanism available to a public school in Washington for immediately removing a student from school for an emergent safety concern. *See LaVine v. Blaine School District*, 257 F.3d at 990. Unlike a suspension which lasts for a predetermined number of days, a safety expulsion may be revoked as soon as the safety concern is addressed. Because an emergency expulsion is inherently tied to the duration of the safety concern, it is the least restrictive alternative.

The LaVines admit that Blaine School District had the right to remove James LaVine from school pending a psychological evaluation, but merely argue that this removal should have been termed a "temporary suspension" rather

than a "safety expulsion." This type of semantic dispute arising from the unique regulatory framework of Washington State does not warrant Supreme Court review.

B. The Ninth Circuit Decision Is Consistent With Federal Authority

The Ninth Circuit decided this case based on an analysis under *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969). *See LaVine v. Blaine School District*, 257 F.3d 981, 989-92 (9th Cir. 2001). The LaVines agree that *Tinker* controls, but argue that the Ninth Circuit misapplied the *Tinker* standard to the facts of this case. A writ of certiorari is rarely granted when the alleged error is the misapplication of the proper legal standard to the facts of a particular case. *See* Supreme Court Rule 10.

The LaVines argue that the Ninth Circuit misapplied *Tinker* in this case because the poem was not a "true threat," and there was insufficient likelihood of disruption of school activities to justify "punishment."[2] Petition at 16-17. Whether or not "Last Words" was a true threat is subject to interpretation. Threats come in many forms, and "the fact that a threat is subtle does not make it less of a threat." *United States v. Orozco-Santillan*, 903 F.2d 1262, 1264 (9th Cir. 1990), *quoting United States v. Gilbert*, 884 F.2d 454, 457 (9th Cir. 1989). However, whether or not "Last Words" was a true threat is unimportant to the Court's decision of whether to

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2. Although the LaVines continue to use the word "punishment" to describe James' emergency expulsion, now that they have admitted it was appropriate for the school district to temporarily remove James from school pending a psychological evaluation, it is unclear what about the emergency expulsion was objectionable to the LaVines.

grant the petition, because the Ninth Circuit did not reach this issue. If it had, then a *Tinker* analysis would have been unnecessary because true threats are not protected by the First Amendment. *See Watts v. U.S.*, 394 U.S. 705, 708, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969). The Ninth Circuit concluded that even assuming the poem was not a true threat, the school district's actions were justified under a *Tinker* analysis. *LaVine v. Blaine School District*, 257 F.3d at 989, n.5.

Tinker held that the First Amendment rights of a student must be applied "in light of the special characteristics of the school environment," and recognized the countervailing "rights of other students to be secure and to be let alone." *Tinker v. Des Moines Independent Community School District*, 393 U.S. at 506, 508. Public school administrators have a duty to protect the safety of their students and teachers, and a balancing of rights is necessary whenever a Free Speech versus school violence issue arises.

The LaVines argue that the poem did not meet the *Tinker* standard because the poem "did not provide any basis for predicting that James would harm those at school." Petition at 17. The flaw in the LaVines' reasoning is their insistence that the poem be analyzed in isolation from the surrounding circumstances. The Ninth Circuit appropriately looked to "the totality of the relevant facts . . . all of the circumstances confronting the school officials that might reasonably portend disruption." *LaVine v. Blaine School District*, 257 F.3d at 989, citing *Karp v. Becken*, 477 F.2d 171, 174-75 (9th Cir. 1973). Following a very case specific analysis under *Tinker*, and the backdrop of recent school shootings, the Ninth Circuit concluded that school authorities "reasonably . . . forecast substantial disruption of or material interference with school activities — specifically, that James was intending to inflict injury upon himself or others." *LaVine v. Blaine School*

District, 257 F.3d at 990. The Ninth Circuit held that *Tinker* does not require school administrators to wait until disruption actually occurs before they may act. *LaVine v. Blaine School District*, 257 F.3d at 989.

The LaVines do not argue with the case law applied by the Ninth Circuit, and do not point out any U.S Supreme Court case or federal circuit opinion in direct conflict with the Ninth Circuit decision. They argue merely that this Court should take this opportunity to reaffirm its opinion in *Tinker*, and to clarify a perceived inconsistency among various lower federal courts concerning whether or not *Tinker* calls for the application of a "rational basis test." Petition at 19-22. This Court need not grant certiorari to reaffirm an earlier decision when there are no federal appellate court decisions in conflict with the prior decision. Moreover, the perceived inconsistency in application by lower federal courts is a misperception by the LaVines. A so-called rational basis test is not inconsistent with *Tinker*, so long as the court involved examines the reasonableness of the school official's conclusion that the factual circumstances "might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities." *See Tinker v. Des Moines Independent Community School District*, 393 U.S. at 514.

None of the cases relied upon by the LaVines in support of their argument that some federal courts have begun to apply a standard contrary to *Tinker* involved a school violence risk assessment. *Poling v. Murphy*, 872 F.2d 757 (6th Cir. 1989) involved rude comments made by a student in a campaign speech during a school assembly. This case did not even involve a *Tinker* analysis, but rather was appropriately analyzed under *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 98 L. Ed. 2d 592, 108 S. Ct. 562 (1988).

Bystrom v. Fridley High School, 822 F.2d 747 (8th Cir. 1987) involved an examination of school policies concerning the content of printed materials that students would be allowed to distribute on campus. Contrary to the LaVines' conclusion that the Eighth Circuit deviated from the *Tinker* standard, the *Bystrom* court specifically held:

> We believe that the defendants' guidelines comply with *Tinker*. Much more than undifferentiated fear or apprehension is required here. School authorities must, instead, find the existence of specific facts upon which the likelihood of disruption can be forecast, and the guidelines even go on to list examples of such fact.

Bystrom v. Fridley High School, 822 F.2d at 754.

The two T-shirt cases relied upon by the LaVines are clearly inapposite. *See Baxter v. Vigo County School Corp*, 26 F.3d 728 (7th Cir. 1994) and *Gano v. School District No. 411 of Twin Falls County*, 674 F. Supp. 796 (D. Idaho 1987). Neither involved a school violence issue, and both were decided on completely different grounds than those at issue in this case. Baxter involved an elementary school student. Due to the young age of the student, it was determined that the student's rights were not "clearly established," and qualified immunity of the administrator justified dismissal. In *Gano*, a preliminary injunction was denied based on a low likelihood of success on appeal when no actual speech issue could be identified from the T-shirt depicting caricatures of the school administrators in a drunken state.

CONCLUSION

The LaVines have failed to show a compelling reason for review by the Supreme Court. They have not shown that the Ninth Circuit or other federal courts have strayed from the standard set down by this Court in *Tinker*, but merely do not agree with the manner in which the Ninth Circuit applied the balancing test of *Tinker* to the facts in this case. The LaVines do not dispute James' removal from school pending a psychological evaluation — all that was done in this case — but argue that the removal should have been called a "temporary suspension" rather than an "emergency expulsion." This is a semantic issue that is inherently tied to regulations unique to Washington State, and not worthy of Supreme Court review. The petition for certiorari should be denied.

Respectfully submitted,

TYNA EK
MERRICK, HOFSTEDT & LINDSEY, P.S.
Attorneys for Respondents
710 Ninth Avenue
Seattle, Washington 98104
(206) 682-0610

APPENDIX

APPENDIX — RELEVANT WASHINGTON ADMINISTRATIVE CODE PROVISIONS

WAC 180-40-205 Definitions.

As used in this chapter the term: (1) "Discipline" shall mean all forms of corrective action or punishment other than suspension and expulsion and shall include the exclusion of a student from a class by a teacher or administrator for a period of time not exceeding the balance of the immediate class period: Provided, That the student is in the custody of a school district employee for the balance of such period. Discipline shall also mean the exclusion of a student from any other type of activity conducted by or in behalf of a school district. (2) "Suspension" shall mean a denial of attendance (other than for the balance of the immediate class period for "discipline" purposes) at any single subject or class, or at any full schedule of subjects or classes for a stated period of time. A suspension also may include a denial of admission to or entry upon real and personal property that is owned, leased, rented, or controlled by the school district. (3) "Short-term suspension" shall mean a suspension for any portion of a calendar day up to and not exceeding ten consecutive school days. (4) "Long-term suspension" shall mean a suspension which exceeds a "short-term suspension" as defined in subsection (3) of this section. (5) "Expulsion" shall mean a denial of attendance at any single subject or class or at any full schedule of subjects or classes for an indefinite period of time. An expulsion also may include a denial of admission to or entry upon real and personal property that is owned, leased,

rented, or controlled by the school district. (6) "School business day" shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays, upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

WAC 180-40-245 Short-term suspension — Conditions and limitations.

A short-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 180-40-225, subject to the following limitations or conditions, the prior informal conference procedures set forth in WAC 180-40-250, and the grievance procedures set forth in WAC 180-40-255: (1) The nature and circumstances of the violation must be considered and must reasonably warrant a short-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions and/or punishments which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action and/or punishment is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in

cases involving extenuating and/or exceptional circumstances, and (b) short-term suspension is not established as the corrective action or punishment for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section. (2) As a general rule, no student shall be suspended for a short term unless another form of corrective action or punishment reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to short-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers may grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action or punishment has not been imposed upon the student(s)involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action and/or punishment, as to warrant an immediate resort to short-term suspension, and/or(b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to short-term suspension (for example,

misconduct judged by a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws). The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socio economic, minority and majority populations of the school district to the extent deemed practical. (3) No student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has first imposed an alternative corrective action or punishment reasonably calculated to modify his or her conduct and, in addition: (a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact; (b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for

his/her educational success; and (c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school. (4) Kindergarten through grade four — No student in grades kindergarten through four shall be subject to short-term suspensions for more than a total of ten school days during any single semester or trimester as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student. (5) Grade five and above program — No student in the grade five and above program shall be subjected to short-term suspensions for more than a total of fifteen school days during any single semester or ten school days during any single trimester, as the case may be. (6) Any student subject to a short-term suspension shall be provided the opportunity upon his or her return to makeup assignments and tests missed by reason of the short-term suspension if: (a) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades, or (b) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses. (7) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school

district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

WAC 180-40-250 Short-term suspension — Prior conference required — Notice to parent.

(1) Prior to the short-term suspension of any student a conference shall be conducted with the student as follows: (a) An oral or written notice of the alleged misconduct and violation(s) of school district rules shall be provided to the student, (b) An oral or written explanation of the evidence in support of the allegation(s) shall be provided to the student, (c) An oral or written explanation of the corrective action or punishment which may be imposed shall be provided to the student, and (d) The student shall be provided the opportunity to present his/her explanation. (2) In the event a short-term suspension is to exceed one calendar day the parent(s) or guardian(s) of the student shall be notified of the reason for the student's suspension and the duration of the suspension orally and/or by letter deposited in the United States mail as soon as reasonably possible. The notice shall also inform the parent or guardian of the right to an informal conference pursuant to WAC 180-40-255 and that the suspension may possibly be reduced as a result of such conference. (3) All short-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

Appendix

WAC 180-40-260 Long-term suspension — Conditions and limitations.

A long-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 180-40-225, subject to the following limitations or conditions and the notice requirements set forth in WAC 180-40-265 and the hearing requirements set forth in WAC 180-40-270: (1) The nature and circumstances of the violation must be considered and must reasonably warrant a long-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions and/or punishments which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action and/or punishment is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) long-term suspension is not established as the corrective action or punishment for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section. (2) As a general rule, no student shall be suspended for a long term unless another form of corrective action or punishment reasonably calculated to modify his or her conduct has previously been imposed upon the

student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to long-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action or punishment has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action and/or punishment, as to warrant an immediate resort to long-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to long-term suspension (for example, misconduct judged by a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws). The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socio economic, minority and majority populations of the school district to the extent deemed practical.

(3) No student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has first imposed an alternative corrective action or punishment reasonably calculated to modify his or her conduct and, in addition: (a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s),guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact; (b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and (c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and, where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s)for the student's absence from school. (4) Kindergarten through grade

four — No student in grades kindergarten through four shall be subject to long-term suspension during any single semester or trimester, as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student. (5) Grade five and above program — No single long-term suspension shall be imposed upon a student in the grade five and above program in a manner which causes the student to lose academic grades or credit for in excess of one semester or trimester, as the case may be, during the same school year. (6) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed. (7) All long-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

WAC 180-40-265 Long-term suspension — Notice of hearing — Waiver of hearing.

(1) Prior to the long-term suspension of a student, written notice of an opportunity for a hearing shall be delivered in person or by certified mail to the student and to his or her parent(s) or guardian(s). The notice shall: (a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than

English, to the extent feasible, (b) Specify the alleged misconduct and the school district rule(s) alleged to have been violated, (c) Set forth the corrective action or punishment proposed, (d) Set forth the right of the student and/or his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s), and (e) Set forth the facts that: (i) A written (or "oral" if provided for by school district policy) request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the third school business day after receipt of the notice of opportunity for a hearing, and (ii) If such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived and the proposed long-term suspension may be imposed by the school district without any further opportunity for the student or his or her parent(s)or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice. (2) The student and/or his or her parent(s) or guardian(s)shall reply to the notice of opportunity for a hearing and request a hearing within three school business days after the date of receipt of notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing and may be accepted orally if expressly provided for and allowed by rule of the school district. (3) If a request for a hearing is not received

within the required three school business day period, the school district may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the proposed long-term suspension may be imposed.

WAC 180-40-275 Expulsion — Conditions and limitations.

A student may be expelled for violation of school district rules adopted pursuant to WAC 180-40-225, subject to the following limitations or conditions, the notice requirements set forth in WAC 180-40-280, and the hearing requirements set forth in WAC 180-40-285: (1) The nature and circumstances of the violation must reasonably warrant the harshness of expulsion. (2) No student shall be expelled unless other forms of corrective action or punishment reasonably calculated to modify his or her conduct have failed or unless there is good reason to believe that other forms of corrective action or punishment would fail if employed. (3) In addition to the alternative corrective action requirement of subsection (2) of this section, no student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be expelled by reason, in whole or part, of one or more unexcused absences unless the school district has also first: (a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to

attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact; (b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and (c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and, where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school. (4) Once a student has been expelled in compliance with this chapter the expulsion shall be brought to the attention of appropriate local and state authorities including, but not limited to, juvenile authorities acting pursuant to chapter 13.04 RCW in order that such authorities may address the student's educational needs. (5) Any student who has been expelled shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed. (6) All expulsions and the reasons

therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the expulsion.

WAC 180-40-280 Expulsion — Notice of hearing — Waiver of hearing.

(1) Prior to the expulsion of a student, written notice of an opportunity for a hearing shall be delivered in person or by certified mail to the student and to his or her parent(s)or guardian(s). The notice shall: (a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, to the extent feasible, (b) Specify the alleged misconduct and the school district rule(s) or policy alleged to have been violated, (c) Set forth the corrective action or punishment proposed, (d) Set forth the right of the student and/or his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s), and (e) Set forth the facts that: (i) A written (or "oral" if provided for by school district policy) request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the third school business day after receipt of the notice of opportunity for a hearing, and (ii) If such a request is not received within the prescribed period of time, then the right to a hearing maybe deemed to have been waived and the proposed expulsion maybe imposed by the school

district without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice. (2) The student and/or his or her parent(s) or guardian(s)shall reply to the notice of opportunity for a hearing and request a hearing within three school business days after the date of receipt of the notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing and may be accepted orally if expressly provided for and allowed by rule or policy of the school district. (3) If a request for a hearing is not received within the required three school business day period, the school district may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the proposed expulsion may be imposed.

WAC 180-40-295 Emergency expulsion — Limitations.

Notwithstanding any other provision of this chapter, a student may be expelled immediately by a school district superintendent or a designee of the superintendent in emergency situations: Provided, That the superintendent or designee has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel.

or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion shall continue until rescinded by the superintendent or his or her designee, or until modified or reversed pursuant to the hearing provisions set forth in WAC 180-40-305 or the appeal provisions set forth in WAC 180-40-315.